IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 397 of 1998
With
CRIMINAL APPEAL No. 621 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ILABEN DEEPAK DHANRAJ SHAH - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

CRIMINAL APPEAL NO.397 OF 1998
MR KJ SHETHNA for appellant(s) : 1,
MR RC KODEKAR, APP for opponent(s) : 1,
CRIMINAL APPEAL NO.621 OF 1998
MR SA QURESHI for appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 10/10/2006

COMMON CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. Criminal Appeal No.397 of 1998 has been filed by the appellant-original accused No.1 Ilaben, widow of Dipakbhai Dhanrajbhai Shah, whereas Criminal Appeal No.621 of 1998 has been filed by the appellant-original accused Nos.3 and 4 i.e. Kanu @ Motilal Ukarlalji Somavat and Kallu @ Kaushalendra Pratapsinh Shivpalsinh Thakur respectively being aggrieved and dissatisfied by the judgment and order of conviction dated 1-5-1998 passed by the learned Sessions Judge, Surat, in Sessions Case No.211 of 1992 sentencing them to suffer RI for life and fine of Rs.500/-, in default, to suffer one month RI for the offence punishable under Sec.302 read with Sec.201 of IPC. They were also sentenced under certain other sections of IPC and all the sentences were ordered to run

concurrently. However, original accused No.2-Bhagvanlal @ Bhagwati Jetaji Ravat was acquitted of the charges levelled against him.

2. Both these appeals were listed in our board for final hearing in view of the present roster.

3. Facts in nutshell are that in pursuance of marriage of Ilaben(accused No.1) with Dipakbhai Dhanrajbhai Shah (deceased), they were staying together in 302, Sukhsagar Apartment, Athwalines, Surat. Out of the said wedlock, they got three children. Initially, Dipakbhai, his wife, complainant and brother of Dipakbhai were doing the business of custom notified goods in a shopping complex known as Kanaknidhi Complex in the name and style of Desh Pardesh. Later on, they separated themselves and business of Desh Pardesh remained with Dipakbhai and Ilaben and they were doing the same. Other brothers were in good terms with Dipakbhai and Ilaben.

On 1-7-1992, the complainant went to the shop of Dipakbhai and they were there upto 8.00 p.m. Thereafter, they were separated and on the next day, he again went to see Dipakbhai but he was not in the shop. When he again went there in the evening, Ilaben and employee of the shop were there. He inquired about Dipakbai from Ilaben and she informed that Dipakbhai had left the house at 6.00 a.m. without informing her. Therefore, the complainant felt that he might have gone to Bombay for some business purpose. However, since he did not return, family members started searching on their own by contacting relatives and businessmen of Bombay from where they were purchasing goods. However, he could not be found out. Ultimately on 4-7-1992 Ilaben and brother of Dipakbhai i.e. the complainant went to Umra Police Station and made Janvajog entry about missing of Dipakbhai which was registered by PSO, Mahmadkhan Mahmodkhan as station diary entry

No.15 of 1992 at Ex.83. Meanwhile, complainant came to know through liftman Lalsing that on 1-7-1992 at night, Cook Kanu @ Motilal Ukarlalji Somavat (accused No.3) along with one person came in rickshaw and went to the flat of Dipakbhai and early in the morning both came out with wooden box covered with jute. Same was taken out from the lift and placed in a Maruti Van bearing registration No.GJ-5A-1666. After some time, Kanu came back in the flat of Dipakbhai. On 5-7-1992, they came to know that near Anthrali Village, one half burnt dead body was lying and it was sent to New Civil Hospital, Surat and, therefore, the complainant along with his brothers went to New Civil Hospital. They could not identify whether it was the said body of Dipakbhai or not. Thereafter, they again inquired from Ilaben. Ultimately, Ilaben confessed in presence of the complainant, his brothers and other family members that on 2-7-1992 at

night, she, Cook Kanu and a friend of Kanu killed Dipakbhai and his dead body was put into wooden box and has been taken away by Kanu's friend. Therefore, the complainant went to Umra Police Station, Surat, and lodged the complaint to that effect on 7-7-1992 which has been registered as Umra Police Station C.R.No.302 of 1992 for the offence punishable under Secs.302, 201, 120-B and 34 of IPC and further investigation was handed over to P.I., Devendrasing Bhagwati Prasad Bhatt, Umra Police Station, and he started investigation. He visited the scene of offence, prepared panchnama of scene of offence in presence of panchas as well as FSL expert and seized muddamal as suggested by FSL expert from the scene of offence i.e. No.302, Sukhsagar Apartment. He also kept the papers of station diary entry No.15 of 1992 with the investigation papers. He arrested Ilaben on the same day. Thereafter, he recorded the statements of liftman and

watchman of Sukhsagar Apartment together with the statement of Salim Solanki in whose shop Ilaben had gone to repair the mattresses of the bed situated at the scene of offence where Dipakbhai was killed. He continued further investigation and recorded statements of various witness and also directed the Police Officer to prepare the map of scene of offence. He obtained police custody of accused No.1 and also seized muddamal Maruti Van bearing registration No.GJ-5A-1666 alleged to have been used for transporting the dead body from Sukhsagar Flat and same has been sent to FSL. He also recorded statement of Canteen owner, Badriprasad, Security Officer of Batliboi Company Limited. Meanwhile, Bhagvanlal @ Bhagwati Jetaji Ravat (accused No.2) was also arrested. During the course of investigation, accused Bhagvati Jetaji Ravat showed willingness to show the place from where dead body of deceased Dipakbhai was burnt. Therefore, he called the

panchas and primary panchnama was prepared and thereafter all proceeded as instructed by Bhagvati Jetaji along with panchas to the place where dead body was burnt i.e. near Antrali Village. He took the investigation papers of A/D No.12 of 1992 of Palasana Police Station which was registered in view of telephone message received by Palasana Police Station regarding the burnt body lying on the road of Antrali Village. Concerned Police Officer went to the scene of offence and prepared panchnama of scene of offence and also carried out inquest panchnama and seized muddamal i.e. half burnt dead body including head, ash and clay. Three packets were prepared after completing formalities and same were sent to New Civil Hospital, Surat. Ilaben showed willingness to produce the pants of Kanu washed and kept in cupboard by her. Kanu @ Motival on his arrest also showed willingness to show the place of incident. Panchnamas to that effect were

prepared in presence of panchas in Police Station. All concerned were taken to No.302, Sukhsagar Flat as per the direction shown by them. They showed the place of incident. Ilaben showed the pants of Kanu from the cupboard. Panchnamas to that effect were prepared there itself. Kanu @ Motilal also expressed willingness to show the place where dead body of Dipakbhai was burnt. Panchnama to that effect was also prepared after following due legal procedure. Thereafter, he recorded further statement of complainant and during the course of investigation, he came to know that deceased had taken dental treatment with Dr.Shailesh Parikh and therefore, he contacted Dr.Parikh and gave yadi requesting him to visit New Civil Hospital where half burnt dead body was kept and to give opinion regarding the same. Thereafter, he recorded the further statements of various witnesses in A.D. Note No.12 of 1992. On receiving post mortem note

and FSL report, same were kept in investigation file. He also kept the written opinion given by Dr.Parikh dated 14-9-1992 also in the said file. At the end of investigation, charge sheet was submitted into the Magistrate Court against the accused.

4. As the offence alleged against the accused was exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate committed the case to the Court of Sessions at Surat where it was numbered as Sessions Case No.211 of 1992 and transferred to the Court of learned Addl. Sessions Judge, Surat, for trial. The learned Judge framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

5. To prove the case against the accused, the prosecution examined in all 31 witnesses witnesses and also relied on various documentary evidence numbering 19. On submission of closing purshis by the

prosecution, learned Addl. Sessions Judge recorded the further statement of the accused under Sec.313 of the Code. Thereafter, on hearing the learned advocates appearing for the respective parties, learned Addl. Sessions Judge, Surat, delivered the impugned judgment whereby the accused No.2 was acquitted while original accused Nos.1,3 and 4 were convicted for life.

6. As both the appeals arose out of the same judgment and order dated 1-5-1998 passed in Sessions Case No.211 of 1992 by the learned Addl. Sessions Judge, Surat, they were heard together and are being decided by this common judgment.

7. Heard learned Senior Counsel, Mr.K.J.Shethna for the appellant-original accused No.2-Ilaben and learned counsel, Mr.S.A.Qureshi for the appellants-original accused Nos.3 and 4 and learned APP, Mr.R.C.Kodekar for the State, in both the appeals. They took us through the relevant evidence on record along with documentary evidence as well as the

impugned judgment. We will deal with the arguments advanced by the learned counsel for the respective parties point by point.

8. It is required to be noted that the case of the prosecution is based on circumstantial evidence. Law on this point is settled by the Apex Court in **2003 Supreme Court Cases (Cri) 795 in the case of State of Karnataka Vs. M.V.Mahesh** wherein it was held by Apex Court in para 4 as under:

> “In a case based on circumstantial evidence, it is now well settled that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conlcusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, however strong they may be, to take the place of proof.”

In the context of the above settled principle, we shall analysis the evidence led by the prosecution.

9. On 1-7-1992, the deceased and the complainant, who are real brothers, were together and departed at night. As per the evidence on record, deceased did not reach home i.e. 302, Sukhsagar Apartment, Surat on the next day i.e. on 2-7-1992. The complainant therefore went to the shop of the deceased but could not find the deceased there. He came to know through family members that the deceased was also not in the procession led by Maharaja Saheb, their religious head and, therefore, he inquired from the wife of the deceased i.e. Ilaben. She replied that deceased had come to the house the previous night at 10.30 p.m. When she got up, she did not find the deceased on the bed. She further replied that she does not know where he had gone and, therefore, the complainant inquired about his brother through his sources i.e. businessmen at Bombay and also through friends and relatives. As the deceased did not turn up till 4-7-1992, he and wife of the deceased

went to the Police Station wherein complaint to that effect was lodged by Ilaben and it has been registered as Janvajog Entry and police started investigation. On 5-7-1992, when inquired through liftman Lalsing, he told that he saw the deceased Dipakbhai on the night of 1-7-1992 at about 10.30 p.m. when he was taken to the third floor on lift by him where his flat is situated. He further informed that thereafter he did not see Dilipbhai coming out from his flat. He also informed that on the same day late at night, Kanubhai and his friend came in a rickshaw in Sukhsagar Apartment and both went to the house of deceased Dipakbhai. After some time, they came out along with wooden box covered in jute material and same had been taken by them in a Maruti Van. Kanu came back after some time and went to the flat of deceased. It is also the say of the prosecution that during the missing period of Dipakbhai, they also came to know through newspaper and from people that an unclaimed

dead body of a male person was lying near the road leading to Anthrali Village and, therefore, they went to Civil Hospital, Surat, along with his other family members wherein they found a half burnt dead body. As it was half burnt, they could not identify the same. Thereafter, they came back home and on 6-7-1992, Palasana Police came along with the photographs of head portion of the above dead body to show the complainant and others. Still, however, same could not be identified by them. As per the deposition of the complainant, on 7-9-1992, the accused No.1 ultimately made an extra-judicial confession before the complainant, his other brothers, father and other family members that on 1-7-1992 at night, Kanu, his friend and she killed Dipakbhai in the bedroom of their flat and his dead body was taken away in wooden box covered in jute material by Kanu and his friend for disposing the same on the Kadodara road and hence, according to the complainant, he came to Kadodara Police

Station and lodged the complaint to that effect and it has been registered. It was alleged that the accused No.1 had illicit relations with the accused No.3 Kanu @ Motilal Ukarlalji Somavat, who was serving there as a Cook. When it came to the knowledge of the deceased, time and again, there used to be quarrel between the deceased and accused No.1-Ilaben and the accused No.3 was removed from the service by the deceased. However, since the accused No.1 Ilaben insisted for employing him again, he was again taken in service. Thereafter also, the said illicit relations continued. The complainant deposed the same into the Court. He was thoroughly cross examined by the learned counsel for the accused. However, nothing contrary came out shaking his evidence.

10. The contention which has been raised by the learned counsel for the appellants is that previously, deceased and complainant were

partners in a shop of custom notified goods named Des Pardesh. However, since there was a dispute between them, they separated and complainant started same business in a different name and, therefore, there existed enmity between the two and as the deceased was found missing, the complainant took disadvantage of the situation and for the purpose of grabbing the properties of deceased and accused No.1, falsely involved the accused No.1 into the crime in question. The complainant has been thoroughly cross examined by the learned counsel for the accused on the above point. Except the suggestion, there are no other materials comingforth during the course of cross examination turtling his evidence.

11. Learned APP, Mr.R.C.Kodekar, supported the findings recorded by the court below and submitted that since there is no illegality or irregularity in the impugned judgment and order of conviction, same are not required to

be interfered with.

12.It is true that the complainant took active part during the course of investigation and he himself became the complainant. At this juncture, one should not forget the fact that the deceased was his brother and hence he being a brother if filed the complaint or tried to help the investigating agency, it does not mean that his motive was to grab the properties of the deceased and Ilaben by falsely involving Ilaben into the crime. This would also not be probable in view of the fact that Ilaben and deceased had children and, therefore, in any circumstances of the matter, movable and immovable properties would not go to the complainant. We therefore do not find any substance in the above referred arguments advanced by the learned counsel for the appellants and we are of the opinion that same has been rightly dealt with by the court below.

13.It is established that during the course of

investigation, accused No.1 was arrested on 7-7-1992 and thereafter, panchnama of scene of offence has been drawn at 302-Sukhsagar Apartment, Surat, in presence of panchas and FSL experts whereby various muddamals were seized and they accepted the suggestion given by FSL expert to that effect. It is proved by the prosecution that during the course of interrogation, accused No.1 had shown willingness to produce the pants alleged to have been worn by the accused No.3 Kanu at the time of incident and which has been washed, dried and put by her in her cupboard and, therefore, panchas were called and drew panchnama to that effect. Thereafter, all were taken to the place as shown by accused No.1 wherein she produced the pants from the cupboard of her bedroom of 302-Sukhsagar Apartment. The said pants were found to have blood stains and when it was sent to FSL along with other muddamals, it was opined by the FSL Expert that bloodstain found on the

pants was of human blood of the group of deceased. During the course of investigation, it has also been found that the mattresses of rubber form lying on the bedroom of deceased were taken by Ilaben for repairs to the shop of mattresses repairer, Salim Nurmahammad Solanki. Said Salim has been examined by the prosecution as P.W.11 at Ex.52. He deposed that he is having a matresses shop in the name of India Furnishing Centre in Nanpura Mohalla, Surat City. On 2-7-1992 at 2.00 p.m., accused No.1 Ilaben had come to his shop for repairing mattresses. He repaired the same and it was taken by her on the next day. He charged Rs.600/- and Ilaben herself paid the same. Though he was cross-examined by the prosecution, nothing contrary came out. Portion of the mattresses and portion of the backseat of the bed were sent to FSL and it was opined by FSL Expert that human blood of the group of deceased was found on them.

14.Simultaneously, Nareshchandra Gajanand Shukla, who was examined as P.W.1 at Ex.19, and who was discharging his duty as a Home Guard at Kadodara Village, deposed that on 2-7-1992 he received a telephone call at Kadodar Police Chowki from the Sarpanch of Antrali Village at 8.00 a.m. stating about a half burnt body lying by the side of a road leading to Antrali Village. Said information was given by him to Palasana Police Chowki by wireless message. Thereafter, Police Officer of Palasana Police Station went to the scene of offence along with the present witness wherein they saw a dead body which is burnt except the portion of its head and, therefore, inquest panchnama Ex.20 was drawn there itself in presence of panchas and seized burnt pieces of the body including head, ash and earth after drawing panchnama Ex.21 there itself. Same were sent to Civil Hospital, Surat, for post mortem. Said witness was cross examined by the learned

counsel for the accused. It was asked in the cross examination that he was not telling the truth and had never visited the scene of offence and nothing had taken place in his presence.

15. It is required to be noted that above referred muddamal was seized by drawing panchnama in A.D.No.12/1992. In support of that, prosecution examined Ratilal Chibabhai Parmar, P.W.2 at Ex.23.

16. As stated earlier, when the complainant and other family members visited New Civil Hospital, Surat, they could not identify the half burnt dead body lying there. However, later on during the course of investigation it was known that Dipakbhai had taken dental treatment with Dr.Sailesh Danvantarai Parikh and hence, evidence of Dr.Parikh will have to be seen.

17. Dr.Sailesh Danvantarai Parikh, P.W.23 at Ex.89, deposed that he did BDS and has been rendering service as Dental Surgeon in the

City of Surat since last 20 years. He used to keep regular record of his patients including date of appointment, treatment sheet, etc. on a permanent basis. He further deposed that on 16-12-1991 a person named Dipakbhai D.Shah aged about 37 years having his address at 302, Sukhsagar Apartment, Athwalines, Surat, had visited his dispensary. His case paper number was 2853. His official and residential telephone numbers were also noted down in the sheet. Along with Dipakbhai, another person namely, Sham M.Lulla aged about 30 years was also treated on the same day. His residential address was also given as 302, Sukhsagar Apartment, Athwalines, Surat, with residential and office telephone numbers. He further deposed regarding the complaints of the deceased and also the treatment provided to him. He deposed that again on 24-12-1991, deceased had visited his dispensary and was again treated. He produced and proved the appointment book by deposing

that even though appointment was fixed at 10.30 a.m., he came at 10.45 a.m. On that day, along with Dipakbhai, Ilaben had also come. Her case number was 2953 and she was also treated by him. He further deposed that thereafter deceased had never his dispensary. He further deposed that in view of yadi sent by I.O. requesting him to visit the corpus seized from Antrali and kept in New Civil Hospital, he was taken to New Civil Hospital. He contacted Dr.Subramaniam, who was the senior doctor and who performed the post mortem of the above referred corpus with his colleague doctor. He saw various photographs of head portion and part of spinal cord, etc. and compared the same with the treatment sheet of Dipakbhai maintained at his dispensary. He deposed the same in detail and ultimately gave the definite opinion in writing that the head of the corpus shown to him in New Civil Hospital, Surat, was of deceased Dipakbhai. His opinion which formed

part of the prosecution evidence has been proved by him.

18. It is to be noted that post mortem of the corpus found from Anthrali Village was performed by Dr.Battaram Vishweshwar Subramaniam along with his colleague, Dr.Pravin Bodke. Dr.Subramaniam was examined as P.W.24 at Ex.106. His evidence was discussed at length by the court below in its judgment in para 27.

19. It reflects from the evidence of Dr.Subramaniam discussed by the court below that he did M.D. in Forensic Science in 1967 and prepared various papers on the above subject. He has been performing post mortem since the year 1969. He categorically deposed that on 4-7-1992, he received certain parts of dead body of an unknown male in half burnt condition through Police Constable, Thakhatsing Dalsukh. He deposed that his colleague, Dr.Pravin Bodke, started post mortem on 8-7-1992 and submitted the report

to I.O. on 7-8-1992. First they took out the brain matter from foraman magnum portion of the skull and was kept for chemical analysis. During the course of post mortem, they found certain injuries on lips, below the right eye and near the nose. According to him, the post mortem lasted for 4 days with different process having undertaken and came to the conclusion that it was the skull of a male person between the age group of 25-40 years. Due to special overriding teeth, a person could be identified. They found the presence of overriding teeth in the photographs shown to them of a male person died in a suspicious condition and ultimately, they opined that it was a skull and burnt portion of deceased Dipakbhai Shah and gave opinion to that effect. The brain matter taken from skull was sent for chemical analysis and report to that effect was at Ex.150. FSL Expert categorically opined in the said report to have seen presence of 20.617 milligram of

barbitone, a sedative drug, in the brain matter and which supported their opinion. The injuries they found on the corpus were of antimortem and reddish injury found on the cheek suggests that the deceased was killed by applying force on neck and mouth. He deposed that phenobarbitone is a naracotic and sedative drug used especially to treat epilepsy and if it is used in high dose, then person will go in deep sleep or coma or deep coma or may even loose his life also. He categorically deposed that as per report Ex.150, the effect of phenobarbitone reached upto brain. Presence of 20.617% of said substance in the brain shows that before killing the person, he was put into coma by way of above referred sedative drug and thereafter he was physically attacked. The doctor categorically deposed that in the above circumstances, injury found on the face of deceased can be possibly caused by blows. Dr.Subramaniam was thoroughly cross examined

by the otherside when suggestion was put that if a person regularly consumes said sedative drug, then there are chances of the person being addicted to it. It was replied by the doctor that examination of the skull portion of the corpus disclosed that deceased was not habituated in the said drug.

20. As regards the blood group, it was the opinion of the FSL expert that the corpus was of a male person of the blood group “B”. It is established that the deceased was having the blood group “A”. It is further established that the muddamal corpus found from Antrali Village has been found to be of the male person of the group “B” and the muddamal which has been seized from 302 Sukhsagar Apartment was of a male person of the blood group “B”. Apart from that, the bloodstain found on the pants recovered at the instance of accused No.1 from the cupboard of her bedroom was also of the blood group “B”.

21.It was the contention raised by the learned counsel for the appellants that scene of offence is not 302-Sukhsagar Apartment, Athwalines, Surat, but was very near to Athwalines from where the corpus has been found. The other contention was that the corpus recovered from Antrali Village is not of deceased Dipakbhai.

22.It is established that muddamal which has been seized from the bedroom of 302-Sukhsagar Apartment i.e. pants which was shown by the accused No.1 and seized from the cupboard of her bedroom kept by her was found to have human blood of the group “B” which is of the deceased. Moreover, there are evidence to indicate that on the night of 1-7-1992, the deceased was at his residence i.e. 302-Sukhsagar Apartment. Even if we accept the version of the accused No.1 in her further statement that the deceased left early in the morning at 6.a.m. on 2-7-1992, then also, there are other evidence along with the

confessional statements of accused No.1 before the complainant and other relatives prior to registering the complaint and confessional statement of accused No.4 Kallu to the effect that the deceased was at his residence on 1-7-1992. Apart from the above, scientific evidence also shows that the Maruti Van in which dead body of the deceased has been transported has been found to have human blood of the group “B” which is of the deceased. There are evidence to the effect that at 8.00 a.m. on 2-7-1992, Home Guard-Nareshchandra Gajanand Shukla, received a telephonic message about the dead body of a person found between Surat and Anthrali Village. In view of the facts and circumstances narrated above and also taking into the time factor, it cannot be said that after leaving the house at 6.00 a.m., Dipakbhai has been killed and set on fire at Anthrali Village. This is also not possible looking to the conduct of accused No.1 till

she made a confessional statement. Hence, it can certainly be said that the deceased was in his house on 1-7-1992. It can also be said that the place of incident is 302-Sukhsagar Apartments and the corpus recovered from Antrali Village is of the deceased Dipakbhai only.

23. All the circumstances narrated above together involve the accused No.1 with the crime in question. There are evidence to show that accused No.1 had illicit relations with accused No.3 Kanu and which was not accepted by her deceased husband and as a result of that, there was quarrel existing between them. Even accused No.3 was removed from the service and again he has been brought in due to insistence of accused No.3 and their illicit relations remain continued. Not only that, there are other evidence of Canteen Boy, Canteen Contractor, Watchman, etc. connecting them with the crime in question. In these circumstances also, we are

unable to accept the arguments advanced by the learned counsel for the appellants that incident did not take place at 302-Sukhsagar Apartment, Athwalines, Surat.

24.As discussed earlier, her conduct was such that if her husband had left the house, she should have informed either the nearer or dearer or should have informed the police but she remained silent till she had made voluntary confessional statement before the complainant and other relatives. Not only that, she tried to mislead the investigating agency by way of registering the janvajog entry informing that her husband had gone missing since 1-7-1992. In view of the above also, it cannot be said that place of offence is not 302-Sukhsagar Apartment, Athwalines, Surat.

25.Another point to be dealt with by this Court is regarding the legality and validity of confessional statements made by the accused No.4-Kallu @ Kaushalendra Pratapsing

Shivpalsing Thakur recorded under Sec.164 of the Code. In this regard, prosecution examined P.W.25 Dilipbhai Kantilal Trivedi, Judicial Magistrate (First Class), Surat, at Ex.125 to prove the confessional statement of accused No.4 recorded as Exs.121 from page Nos.1 to 12. He deposed that the confessional statement of accused No.4 was voluntary and all required procedures were followed by him before recording the same under Sec.164-A of the Code. He recorded the same in his own handwriting and signed by him after making the endorsement. He categorically deposed that he made the accused No.4 aware of the seriousness of giving confessional statement with a specific understanding that it can be used against him. After getting his willingness, he recorded his primary statement on 20-7-1992 and after obtaining signature, he was sent him back to judicial custody for thinking over it again. Thereafter, again on 22-7-

1992, he came into the Court. Thereafter, as the witness was replying to the query of the Court in Hindi language and was also understanding Gujarati language, the learned Magistrate put the questions in Hindi and the replies have been noted down in Hindi. He also confirmed about the fact that the accused knew that he was giving the said statements before the Magistrate. He was also asked whether he wants more time to which, he said no. Hence, after inquiring thoroughly and after following all procedures, his confessional statements were recorded by the concerned Magistrate in the open Court in presence of 50 to 60 persons. Prior to that also, he was informed that those statements can be used against him for which, he may even be awarded death punishment. Even thereafter also, he showed willingness and his statements were recorded as stated above. Signature of the accused No.4 was obtained on the same. Same has been proved by the witness

in the Court. He was thoroughly cross examined by the otherside. It has been asked that he did not follow the required procedures to be followed. However, nothing came out in his cross examination turtling his evidence. It has been kept in sealed over and was opened in the Court in presence of all concerned.

26. From the above evidence, prosecution is able to prove the above confessional statement of accused No.4 which narrated all details of the incident and which totally involve him into the crime in question. Not only that, the only contention upon which much weightage has been given by the learned counsel for the appellants is that first statement has been recorded by the Magistrate in Gujarati language. For which, he took us through Sec.164-A of the Code along with its proviso. We have gone through the same and we are fully satisfied that all procedures which are required to be followed before recording the

confessional statements have been followed by the learned Magistrate. As far as the first date when he was produced in Court, that proceeding was not in Hindi language. However, facts remain that his confessional statement has not been recorded on that day but only the awareness regarding the confessional statement was given and that being the court procedure was not required to be written in Hindi. It may however be noted that his confessional statement was recorded on the next date i.e. on 22-7-1992 and it was in Hindi language. Therefore, if the proceeding giving awareness of the confessional statements has not been recorded in Hindi, it cannot be said that it is not legal one in view of Sec.164-A and Sec.281 of the Code. Therefore, the contention raised by the learned counsel for the appellants that the confessional statement is not legal and no validity can be attached to it does not merit any consideration in view of complete

procedures having followed as required under Sec.164 and Sec.281 of the Code.

27. As far as the motive is concerned, there are evidence on record which we have discussed earlier that accused No.1-Ilaben and accused No.3 had illicit relations and prosecution could prove the same along with evidence that said illicit relations were not liked by the deceased. As the deceased was coming in their way of said relations, just to remove him from the same, deceased has been brutally killed by the accused. As stated earlier, prosecution could prove the conspiracy along with motive. It is well settled that conspiracy does not take place in open but it takes place in four corners and hence, except the conspirators, there may not be any other person knowing about the same but it would be revealed from the conduct and other aspects. Here in this case, prosecution could establish the conspiracy with motive. It is true that one of the witnesses, liftman

Lalsing, could not be examined by the prosecution as he was not seen thereafter though prosecution tried the level best. As per the record and as reflects from the impugned judgment, after his statement was recorded by police, he left Surat for Nepal, which is his native place. Since the prosecution could not serve the process issued on him for examining him as the witness, a purshis was submitted in Court. Merely because the liftman was not examined, the entire case of the prosecution cannot be discarded especially when there are other ample evidence as have been narrated hereinabove.

28. The prosecution also proved the weapons in view of willingness having shown by the accused No.3 for producing the same. It may be noted that since accused No.3 showed willingness, after preparing the primary panchnama along with panchas, all went in a jeep to the place as led by the accused No.3

where he produced the muddamal knife alleged to have been used in the commission of offence and panchnama to that effect has been drawn at Ex.29. Moreover, said fact has also been disclosed by the accused No.3 in his confessional statements recorded at Ex.121 and the muddamal article Nos.1 to 10 were sent to FSL wherein it was found to have human blood. However, since the muddamals sent were not sufficient enough for ascertaining the blood group, they could not opine about the same. It is worth noting at this stage that blood group and place of incidence have been proved by the prosecution by ample evidence by an elaborate discussion made hereinabove.

29. Much arguments have been advanced by the learned counsel for the appellants that part of mattresses and some portion of the backside of bed sent to FSL contain human blood of the group of “B” and it has been mentioned in evidence as Dunlop whereas in

the evidence of mattresses repair, it was stated as U-form. It is required to be noted that U-form and Dunlop are the words generally used for form rubber and, therefore, only on that ground, it cannot be said that material was different. What was meant was that the mattresses of rubber form was sent for repair at the shop of Salim Nurmohmad Solanki, the mattresses repairer. Over and above, involvement of the accused No.1 Ilaben has been established from the evidence given by the person who repaired the mattresses also.

30. In the entirety of the circumstances narrated hereinabove, we are of the opinion that the prosecution proved the guilt of the present appellants-accused with the crime in question and hence, we do not find any substance in any of the contentions raised by the learned counsel for the appellants. We therefore hold that the findings recorded by the court below are just, proper and legal

and are on the basis of evidence on record and hence, they do not require any interference.

31. Thus, both the appeals are rejected. The appellant-original accused No.1-Ilaben, widow of Dipakbhai Dhanrajbhai Shah, is on bail and hence, her bail bond shall stand cancelled and she is directed to surrender before the concerned Jail Authorities within fifteen days from today.

32. Office shall place a copy of this judgment in each matter.

(R.P.DHOLAKIA,J.)

(S.D.DAVE,J.)

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